

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

TEXAS STATE LULAC; VOTO
LATINO, et al.,

Plaintiffs,

V.

BRUCE ELFANT, et al.,

Defendants.

[illegible]

**CIVIL ACTION NO:
1:21-cv-546**

**SCARPELLO'S RESPONSE TO
PLAINTIFFS TEXAS STATE LULAC AND VOTO LATINO'S MOTION FOR
SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

Defendant Michael Scarpello, in his official capacity as the Dallas County Elections Administrator (“Scarpello”), pursuant to Rule 56 of the Federal Rules of Civil Procedure and this Court’s Standing Order governing motions for summary judgment, respectfully files his response to Plaintiffs Texas State LULAC and Voto Latino’s Motion for Summary Judgment and Memorandum of Law in Support (ECF No. 140) (the “Plaintiffs’ MSJ”).

I.
SUMMARY OF THE PARTIES' CONTENTIONS IN THE PENDING MOTIONS

Plaintiffs brought suit challenging the constitutionality of Senate Bill 1111, 87th Leg., Reg. Sess. (Tex. 2021) (“SB 1111”), which amended Chapters 1 and 15 of the Texas Election Code. ECF 1. Plaintiffs’ Complaint alleges that SB 1111 provisions referred to as the residency

provisions,¹ temporary relocation provisions,² and post office provisions³ violate the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution. Specifically, Plaintiffs alleges that, “SB 1111 infringes on the rights to free speech and expression in violation of the First Amendment (Count I), unduly burdens the right to vote in violation of the First and Fourteenth Amendments (Count II), and denies or abridges the right to vote on account of age in violation of the Twenty-Sixth Amendment (Count III).” ECF 140, at pp. 13-14.

Plaintiff moves for summary judgment on Counts I, II, and III of the Complaint, and asks the Court to enjoin enforcement of Texas Election Code, Sections 1.015(b), (f), 15.051(a), 15.052(b), 15.053(a), 15.054(a). ECF 140. Intervenor-Defendant Ken Paxton also moves for summary judgment on the grounds that Plaintiffs lack standing and, further, that: 1) Section 1.015(b) does not violate the First Amendment; 2) any burden that exists in Sections 1.015(b) and (f), and § 15.051(a), is minimal and, outweighed by the State’s interests; and 3) SB 1111 does not violate the Twenty-Sixth Amendment.

Plaintiff seeks summary judgment against Defendant Scarpello and the other Defendants. Defendant Scarpello denies that he violates the law in conducting the activities of the Dallas County Elections Administrator. Defendant. ECF 131, at ¶¶ 11, 14, 55, 64, 78.

¹ SB 1111 § 1 (amending Tex. Elec. Code § 1.015(b)).

² SB 1111 § 1 (adding Tex. Elec. Code § 1.015(f))

³ SB 1111 §§ 2, 4, and 5 (amending Tex. Elec. Code §§ 15.051(a) and 15.053(a) and adding Tex. Elec. Code § 15.054(a)).

II. RESPONSE

Defendant Scarpello is not empowered or authorized to change Texas law passed by the Legislature and signed by the Governor. Defendant Scarpello's position has always been that the Dallas County Elections Administrator's office desires to comply with federal and state law and the law as determined by this Court or upon appellate review. Thus, Defendant Scarpello takes no position on the competing claims and positions advanced in the pending summary judgment motions. Defendant Scarpello believes that the competing summary judgment motions sufficiently present the legal issues that the Court must resolve. Accordingly, Defendant Scarpello respectfully declines to proffer his own brief, as it would not assist the Court in its task of determining the pure issues of law at issue in Plaintiffs' summary judgment motion or in the competing summary judgment motions, but would instead serve only to increase the costs of litigation to all parties.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT MICHAEL
SCARPELLO, IN HIS OFFICIAL CAPACITY AS THE
DALLAS COUNTY ELECTIONS ADMINISTRATOR**

CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that on May 23, 2022, I caused to be electronically transmitted the attached document to the Clerk of the Court for the United States District Court for the Western District of Texas using the CM/ECF electronic case filing system of the Court.

/s/ Barbara S. Nicholas
BARBARA S. NICHOLAS
Assistant District Attorney